

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## VOUTY THOL,

Petitioner,

V.

DOUG WADDINGTON,

## Respondent.

Case No. C05-5373RJB

## ORDER

The petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This case has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates' Rules MJR 3 and MJR 4. Before the court is petitioner's motion to expand the record. (Dkt # 16). Petitioner asks the court to consider two witness declarations which recant prior testimony. (Dkt. # 16) The witnesses affidavits allege Mr. Thol was not aware of a plan or involved with the attempt to murder Bunny Vath. Respondent opposes the motion in the answer to the petition which is ripe for consideration on November 25<sup>th</sup>, 2005. (Dkt. # 18).

The petitioner has never raised the claim of actual innocence in any past conviction appeals. (Dkt. # 18 procedural history). Therefore, such a claim would be unexhausted. Further, it is clear that such a claim is not in itself, grounds for federal habeas relief. *Herrera v. Collins*, 506 U.S. 390

## ORDER

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1 (1992). The motion is **DENIED**.

2 The petition itself will be ripe for review on November 25<sup>th</sup>, 2005. The Court Clerk is  
3 directed to send a copy of this Order to petitioner and counsel for respondent.

4 DATED this 17<sup>th</sup> day of November, 2005.  
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Karen L. Strombom  
United States Magistrate Judge